



STATE BOARD OF EQUALIZATION

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RE: Change in Ownership Opinion Letter

Dear Mr.

This is in response to your letter of September 26, 1990 to Mr. Richard H. Ochsner in which you request our opinion as to whether the proposed transaction described in your letter and set forth below will result in a "change in ownership" for property tax purposes.

Taxpayer Facts

1. "XYZ" is a California general partnership (the "General Partnership"). The general partners of the General Partnership and their respective partnership interests are as follows:

<u>General Partner</u>	<u>Profits Interest</u>	<u>Capital Interest</u>
"A"	16.67%	16.67%
"B"	50.00%	50.00%
"C"	33.33%	33.33%
Total	100.00%	100.00%

2. The General Partnership owns a leasehold interest in property (the "Leasehold") located in Los Angeles County and operates the improvements thereon. The Leasehold expires in 2030 and has up to four successive ten year renewal options.

Proposed Transaction

1. The partners desire to convert the General Partnership to a California limited partnership (the "Limited Partnership"). The purpose of the transaction is to obtain limited liability for the present partners with respect to the General Partnership's business.

2. Prior to converting to the Limited Partnership, the General Partnership will admit a newly formed corporation (the "Corporation") to the General Partnership as a general partner. At the time the Corporation is formed, the three general partners will each contribute 1% of their partnership interest to the Corporation in exchange for a proportionate number of shares of stock in the Corporation. The Corporation will thus receive a total 1% partnership interest in the General Partnership, as follows:

<u>General Partner</u>	<u>Interest</u>	<u>Corporation's Partnership Interest</u>			
"A"	16.67%	X	1%	=	.001667%
"B"	50.00%	X	1%	=	.005000%
"C"	33.33%	X	1%	=	<u>.003333%</u>
Total Corporation Interest =					1.000000%

The outstanding stock of the Corporation will be held by "A", "B", and "C" in the same proportion as their partnership interests in the General Partnership.

3. After admission of the Corporation to the General Partnership, the general partners of the General Partnership and their respective partnership interests will be as follows:

<u>General Partner</u>	<u>Profits Interest and Capital Interest</u>
Corporation	1.0000%
"A"	16.5033%
"B"	49.5000%
"C"	<u>32.9967%</u>
Total	100.0000%

4. The General Partnership will convert to the Limited Partnership by amendment of its partnership agreement in accordance with the California Corporations Code. The Corporation will be the sole general partner of the Limited Partnership and "A", "B" and "C" will become limited partners of the Limited Partnership. The four partners' interests in the Limited Partnership will be identical percentage interests in profits and capital as set forth in paragraph 3 above.

5. At the time of conversion, the General Partnership will assign the Leasehold to the Limited Partnership and the Limited Partnership will assume the obligations of the owner thereunder.

Law and Analysis

Revenue and Taxation Code* section 60 defines "change in ownership" as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Section 61 provides in relevant part that "[e]xcept as otherwise provided in section 62, change in ownership, as defined in section 60 includes ...(c)...any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options)"

Section 62(a)(2) provides in part that change in ownership shall not include:

[a]ny transfer between...legal entities...which results solely in a change in the method of holding title to the real property and in which proportional ownership interests of the transferors and transferees, whether represented by stock, partnership interest, or otherwise, in each and every piece of real property transferred, remain the same after the transfer.

Section 64(a) provides in relevant part that "the purchase or transfer of ownership interests in legal entities, such as...partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity" (unless subdivisions (c) or (d) of Section 64 provide otherwise).

Property Tax Rule 462(j) (See 18 California Code of Regulations section 462) provides in relevant part that:

(1) Transfers of property to and by legal entities. Except as is otherwise provided in subdivision (2), the transfer of any interest in real property to a corporation, partnership or other legal entity is a change in ownership of such real property transferred.

(2) Exclusions: ...(B) Transfers of real property between separate legal entities or by an individual(s) to a legal entity (or vice versa), which result solely in a change in the method of holding title and in which the proportional ownership interests in the property remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented

* All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

by stock, partnership shares, or other types of ownership interests, shall be defined as "original co-owners" for purposes of determining whether a change in ownership has occurred upon the subsequent transfer(s) of the ownership interests in the legal entity.)

(3) Transfers of ownership interests in legal entities. Except as is otherwise provided in subdivision (4), the purchase or transfer of corporate stock, partnership shares, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity.

(4) Exceptions:

(A) When any corporation, partnership, other legal entity or any person:...(ii) obtains direct or indirect ownership of more than 50 percent of the total interest in both partnership capital and profits....

(B) When real property transferred to a corporation, partnership or other legal entity is excluded from a change in ownership pursuant to (2)(B) and the "original co-owners" subsequently transfer in one or more transactions, more than 50 percent of the total...ownership interests in the entity as defined in (4)(A). For purposes of determining whether more than 50 percent of the total...ownership interests in the entity has been transferred, transfers of such interests by the "original co-owners" shall be cumulated beginning with the time of first ownership interest transfer.

...

5. Partnership.

...

(B) Except as provided in (4)(A)(ii) and (4)(B), the addition or deletion of partners in a continuing partnership does not constitute a change in ownership of partnership property.

Since the Corporation obtained only a 1% interest in the General Partnership, no change in ownership occurred under section 64(c) or Property Tax Rule 462(j)(4)(A). Although the facts don't specify whether "A", "B" and "C" are original co-owners as defined in section 64(d) and Property Tax Rule 462(j)(2)(B) with respect to their interests in the General Partnership or whether there had been any prior transfers of interests in the General Partnership, we assume for purposes of this opinion that "A", "B" and "C" are not original co-owners with respect to their interests in the General Partnership and

that there is, therefore, no change in ownership under section 64(d) as a result of the transfer to the Corporation. Under that assumption, the transfer of the 1% interest in the General Partnership to the Corporation is therefore excluded from change in ownership under section 64(a) and Property Tax Rule 462(j)(3).

Similarly, the admission of the Corporation as a partner in the General Partnership would be excluded from change in ownership under Property Tax Rule 462(j)(5)(B) assuming General Partnership were a continuing partnership, i.e., a partnership in which the addition of a partner does not cause a dissolution (See Corporations Code section 15031(7)). In this case, however, it does not matter that the General Partnership is not a continuing partnership. Under section 62(a)(2) and Property Tax Rule 462(j)(2)(B), the admission of the Corporation to the General Partnership, the conversion of the General Partnership to the Limited Partnership and the assignment of the Leasehold to the Limited Partnership would not constitute a change in ownership under section 61(c) because the proportional ownership interests of "A", "B" and "C" in the Leasehold remain the same after such events as they were before.

As a result of such transaction, "A", "B" and "C" and the Corporation would be deemed original co-owners as defined in section 64(d) and Property Tax Rule 462(j)(2)(B) for purposes of determining whether subsequent transfers of interests in the Limited Partnership will result in a change in ownership of the Leasehold real property which under section 61(c) would be deemed to be owned by the Limited Partnership as a result of the proposed transaction.

The views expressed in this letter are advisory only and are not binding upon the assessor of any county. You may wish to consult the Los Angeles County Assessor in order to confirm that the subject property will be assessed in a manner consistent with the conclusion stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Tax Counsel

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2813D

cc: Mr. Verne Walton
Mr. John W. Hagerty

CHANGE IN OWNERSHIP

220.0540 Penalty for Failure to File Statement.

1. The penalty under Revenue and Taxation Code section 482 for failure to file a change in ownership statement is mandatory upon the expiration of the 45-day period. However, a penalty may be cancelled by the board of supervisors for excusable delay.

2. The penalty under section 482 is the only penalty authorized for failure to file a statement and may only be applied once. However, if a property transfers more than once during an assessment year, a penalty applies to each instance of noncompliance in reporting the transfers. In addition, an assessor may require an owner of real property to file a property statement, and under Revenue and Taxation Code section 484 failure to comply is subject to penalty as provided in Revenue and Taxation Code section 462.

3. The penalty will be based upon the taxes applicable to the interest transferred during the tax year (July 1 to June 30) in which the 45-day period under section 482 expires. When only a portion of a property changes ownership, the taxes on the roll must be prorated to determine the amount of the penalty.

4. Penalty enrollment procedures are as follows:

(a) If, on the expiration of the 45-day period under section 482, the then owner of the property is the person who failed to file the statement, the penalty should be added to the roll prepared for the fiscal year during which the 45-day period expires; except that if the 45-day period expires during the period March 1 through June 30 of any assessment year, the assessor has the option of adding the penalty to the roll then being prepared.

(b) If, on the expiration of the 45-day period under section 482, the then owner of the property is not the person who failed to file the statement, the penalty should be added to the unsecured roll in the name of the person who was required by law to file the statement. The option in (a), above, as to which secured roll may be used, is likewise applicable to selection of the unsecured roll. LTA 2/8/80 (No. 80/19); LTA 6/27/80 (No. 80/102).